

November 14, 2007

Via Electronic Filing

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325
Washington, DC 20554

**Re: Futurephone.com, LLC
In the Matter of Establishing
Just and Reasonable Rates for
Local Exchange Carriers
WC Docket No. 07-135**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), this letter is to provide notice of ex parte meetings. On November 8 & 9, 2007, officers of Futurephone.com LLC ("Futurephone"), Thomas F. Doolin and John Lawless, and Futurephone's counsel, Frederick M. Joyce, met with various Commission officials to discuss matters related to the above-referenced proceeding.¹

During these meetings, the Futurephone representatives discussed a number of topics, including: (a) the nature of Futurephone's service, whereby consumers could access the Internet and communicate overseas for the price of a domestic long distance call; (b) how Futurephone's service supported the Commission's goal of promoting economical service alternatives for consumers; (c) that Futurephone is an end-user of local exchange carriers' ("LECs") services, and consequently interexchange carriers ("IXCs") are required to pay LECs' legally tariffed terminating access charges for traffic delivered to Futurephone's Internet portals; (d) that Futurephone was forced out of business due to IXCs' unwarranted "self help" in refusing to pay LECs' access charges for traffic directed to Futurephone, thus costing consumers an economic alternative to traditional international long distance service; and (e) that it is reasonable for Internet

¹ On November 8, 2007, Futurephone's officers and counsel met with: Commissioner Tate's Legal Advisor Christopher Moore; Pricing Policy Division Chief Albert Lewis, and Division officials Jay Atkinson, Douglas Slotton, and Lynne Engledow; and Wireless Competition Bureau Chief Dana Shaffer, Assistant Chief Donald Stockdale, and Legal Counsel to the Bureau Chief Randy Clark. On November 9, 2007, Futurephone officers and counsel met with: Chairman Martin's Legal Advisor Ian Dillner; Commissioner Adelstein's Legal Advisor Scott Bergmann; and Commissioner McDowell's Legal Advisor John Hunter.

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service providers ("ISPs") and enhanced service providers to share terminating access charges because they provide valuable service to the terminating carriers, the originating caller and IXC's, and because Futurephone incurs costs completing these Internet communications services.

Futurephone representatives requested that the Commission formally address the IXC's' unlawful self-help practices and Internet-based international communications services in this rulemaking proceeding. Futurephone also provided the FCC with the attached information depicting the "two-call" nature of Futurephone's service (with the originating call terminating in either Iowa or Minnesota); a legal analysis of Futurephone's status as an end user/ISP under the access charge regime.

Pursuant to the Commission's Rules, this ex parte notice is being filed electronically through the Commission's Comment Filing System procedures. If you have any questions, please contact the undersigned at (202) 344-4000.

Sincerely,

/s/ Frederick M. Joyce

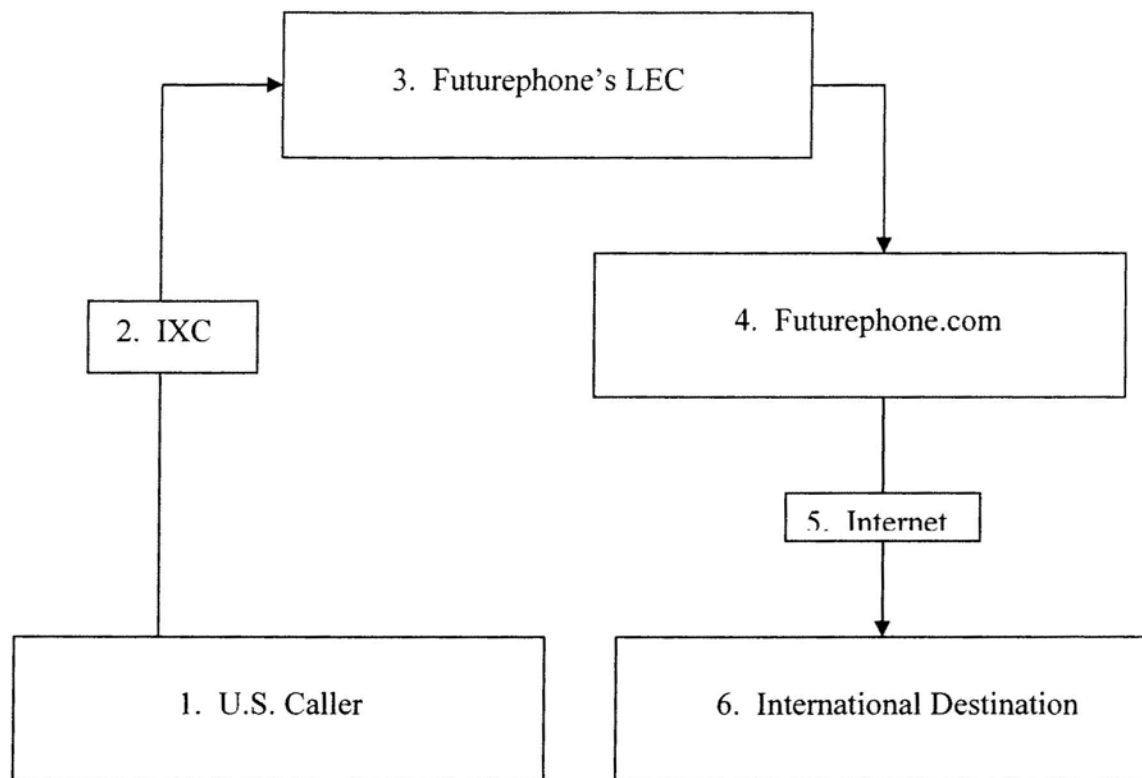
Enclosure

cc (w/enc.): Ian Dillner
Scott Bergmann
John Hunter
Christopher Moore
Dana Shaffer
Donald Stockdale
Randy Clark
Albert Lewis
Jay Atkinson
Douglas Slotton
Lynne Engledow

FUTUREPHONE MEETINGS WITH FCC

- Futurephone.com, LLC (“Futurephone”) was founded in 2006 by two entrepreneurs, Tom Doolin and Jack Lawless. Futurephone was funded entirely by Messrs. Doolin and Lawless, who invested more than \$1 million of their own money to launch the company.
- John Lawless, CEO. BS Electrical Engineering, MBEE NYU, thirty years telecommunication experience: five years at AT&T, 10 years at Sprint, and 15 years telecommunications entrepreneur.
- Thomas Doolin, President. Fifteen years telecommunications experience: three years at New Media Telecommunications, and 12 years telecommunications entrepreneur.
- From October 2006 until February 2007, Futurephone provided a unique service where for the cost of a call to Iowa or Minnesota, consumers could access the Internet and communicate overseas for no additional charge. During this time, U.S. callers placed *over 7 million requests* for Futurephone’s service. This service entailed a LEC terminating voice traffic at a Futurephone Internet portal. The caller was then prompted to enter the country code and telephone number of the party to be reached. Futurephone transmitted the call overseas *via* the Internet. Futurephone paid fees to overseas telephone companies for delivering the new calls to their destinations.
- Traffic did terminate at Futurephone’s Internet portals, as Futurephone is an end-user of the LECs’ services:
 - (a) Futurephone is an ISP, not a common carrier. Futurephone did not charge for its service, and it cannot be classified as a telecommunications carrier as defined in Section 153(46) of the Communications Act. Futurephone’s use of the PSTN ended when it received the calls from the LECs. The “end-to-end” analysis for determining where a traditional phone call ends does not apply to Futurephone’s service. *See Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1, 4 (DC Cir. 2000).
 - (b) By entering its name for service from the LECs, Futurephone was an end-user of the LECs’ access services, as described in their tariffs, and according to those tariffs traffic terminated at its Internet portals. Hence, IXCs are required to pay the LECs’ tariffed access charges for traffic delivered to Futurephone. *See Qwest Communications Corp. v. Farmers & Merchants Mutual Telephone Co.*, FCC 07-175 (Oct. 2, 2007) at ¶¶ 36-38.
- Futurephone’s service provided American consumers with an economical alternative to traditional international calling services:

- (a) Consumers could access the Internet and communicate overseas for the cost of a domestic long distance call.
 - (b) Futurephone's service comported with the FCC's policy of promoting competition in the global marketplace and providing U.S. consumers with additional service options. *See Policy Reform International Settlement Rates*, 19 FCC Rcd 5709, ¶ 9 (2004).
- Futurephone was forced out of business in February due to IXCs: (a) refusing to pay the LECs that served Futurephone terminating access charges for traffic delivered to Futurephone's Internet portals, contending that traffic "did not terminate" at those portals; and (b) filing lawsuits in federal court based on the same issue.
- The IXCs engaged in illegal self-help when they refused to pay access charges to the LECs for Futurephone-bound traffic. *See MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647, ¶ 27 (1999).
- With Futurephone out of business, US consumers have lost an economical service option. The IXCs' actions have resulted in reducing competition in the telecommunications marketplace.
- Going forward, Futurephone would ask the Commission to issue a Declaratory Ruling stating that IXCs may not engage in illegal self-help by refusing to pay legally tariffed access charges for international Internet-based services such as that provided by Futurephone (*i.e.*, that this service comports with the current access charge regime), or address this issue in the current rulemaking: *Establishing Just and Reasonable Rates for Local Exchange Carriers, Notice of Proposed Rulemaking*, FCC 07-176 (Oct. 2, 2007). This could be similar to the June 28, 2007 Declaratory Ruling on call blocking: *Establishing Just and Reasonable Rates for Local Exchange Carriers, Declaratory Ruling and Order*, DA 07-2863 (June 28, 2007).
- Time is of the essence. Since early this year, Futurephone has been incurring substantial legal fees in defending against IXC litigation in numerous forums. This litigation has no end in sight, and Futurephone has been forced to expend significant financial resources by responding to IXCs' court filings and discovery directives, including proceedings in which Futurephone is not a party. Simply put, the IXCs are using litigation as part of their anti-competition strategy. Without help from the Commission, this litigation is likely to continue and Futurephone may never again be able to provide its service.



1. Consumer dials a domestic long distance telephone number.
2. Consumer's IXC routes call to Futurephone's LEC.
3. Futurephone LEC hands call off to Futurephone.com (End User)
4. Futurephone sends information entered by caller to ISP.
5. Packets are routed over internet to international ISP.
6. Packets are routed to International destination.